STATE OF HAWAII — DEPARTMENT OF TAXATION

INSTRUCTIONS FOR FORM N-103
Sale of Your Home

1997

General Instructions

Changes To Note

New rules for sales after May 6, 1997. If you sold your main home after May 6, 1997, you may be able to exclude up to $250,000 of the gain from the sale regardless of your age. If you are married filing a joint return, you may be able to exclude up to $500,000. Any gain in excess of your exclusion is taxable. You may be able to elect to use the rules that apply to sales before May 7, 1997. For more details, see **Sales After May 6, 1997.**

Basis adjustment for certain filers. You must reduce your basis by any exclusion you are claiming for qualified adoption expenses for the cost of capital improvements to your home.

Amendments to the Individual Housing Account (IHA) provisions for taxable years beginning after December 31, 1996. If you established an IHA prior to January 1, 1990, but have not yet purchased a residence, you may elect to report the distribution from the IHA as gross income at the time the property is sold, rather than report the distribution as gross income over a ten-year period. Also, the penalty provision under section 235-5.5(f)(1), Hawaii Revised Statutes (HRS), is amended to provide that upon the sale of the residence, the 10% penalty will be included in your gross income.

CAUTION: *For sales before May 7, 1997, if your new home is located outside Hawaii and at the time of replacement you have established a new domicile outside Hawaii, the gain realized on the sale of the old home is taxable at the time of sale and may not be postponed. Section 235-2.4(l), HRS, allows nonresident active duty military personnel and their spouses, stationed in Hawaii, to postpone the recognition of the gain on the sale of their Hawaii homes as if they were residents of the State of Hawaii. The sale of the Hawaii home and any gain to be recognized in the year of sale must be reported to the State on the taxpayers' Form N-15.*

Who Must File.—Use Form N-103 to report the sale of your main home, whether or not you had a gain from the sale. Use this form to claim the exclusion for sales after May 7, 1997, postpone gain, or make the one-time exclusion for taxpayers age 55 or older. A loss is not deductible. All filers must complete Parts I, II, and IV except as explained below.

Main Home.—You file Form N-103 only for the sale of your main home. It can be a house, a houseboat, housetrailer, cooperative apartment, condominium, etc. If you have more than one home, your main home is the one you live in most of the time.

Internet Address.—Tax forms are available on the Internet. The Department of Taxation's site on the Internet is:

http://www.state.hi.us/tax/tax.html

When To File.—File Form N-103 for the year of sale.

Note: *The additional filing requirements explained next do not apply to sales after May 6, 1997, unless you qualify for and elect to use the rules that apply to sales before May 7, 1997. They also do not apply if the amount on line 13 of Form N-103 is zero or less, even if you replace your home.*

If you are using the rules that apply to sales before May 7, 1997, file 2 Forms N-103 in the following cases:

If you plan to replace your home but have not done so by the time you file your return, and the replacement period has not expired, attach Form N-103 to Form N-11, N-12, or N-15 for the year of sale. In this case, complete Parts I and II only, but do not include the gain in income. If you replace your home after you file your return within the replacement period and your new home costs at least as much as the adjusted sales price of your old home, you will have to file a second Form N-103 by itself. Send this second Form N-103 to the taxation district office where you filed your return reporting the sale of your home. Since this second Form N-103 is being filed by itself, enter your name and address and sign and date the form.

If you replace your home within the replacement period after you file your return and your new home costs less than the adjusted sales price of the old home or you do not replace your old home within the replacement period, file an amended individual income tax return, with a new Form N-103 for the year of sale to report the gain. Interest will be charged on the additional tax due.

If you reported and paid tax on the gain from the sale of your old home and then bought a new home within the replacement period, file an amended return with Form N-103 to claim a refund.

Sales Before May 7, 1997

If you sold your main home before May 7, 1997, you may be able to:

- Elect to take the one-time exclusion for people age 55 or older, or
- Postpone all or part of the gain.

One-Time Exclusion for People Age 55 or Older (Part III)

Generally, you can elect to exclude from your income up to $125,000 ($62,500 if married filing a separate return) of the gain from one sale of any main home you choose. To make the election for this sale, complete Part III and answer "Yes" on line 17. You qualify to make the election if you meet **ALL** of the following tests:

1. You or your spouse were age 55 or older on the date of sale,
2. Neither you nor your spouse have ever excluded gain on the sale of a home after July 26, 1978, and
3. The person who was age 55 or older owned and lived in the home for periods adding up to at least 3 years within the 5-year period ending on the date of sale.

For purposes of test 3, if you were physically or mentally unable to care for yourself, count as time living in your main home any time during the 5-year period that you lived in a facility such as a nursing home. The facility must be licensed by a state (or political subdivision) to care for people in your condition. For this rule to apply, you must have owned and used your residence as your main home for a total of at least 1 year during the 5-year period. See federal Publication 523 for more information.

The gain you exclude is never taxed. But, if the gain is more than the amount you are allowed to exclude, the excess is either included in your income in the year of sale or it is postponed as explained below. Generally, you can make or revoke the choice within 3 years from the due date (including extensions) of your tax return for the year of sale. Use an amended individual income tax return with Form N-103 attached to amend your return. The exclusion election is a once-in-a-lifetime election.

Married Taxpayers.—If you and your spouse own the property jointly and file a joint return, only one of you must meet the age, ownership, and use tests for electing the exclusion. If you do not own the property jointly, the owner must meet these tests, regardless of your filing status on Form N-11, N-12, or N-15.

If you are married at the time of sale, both you and your spouse must make the election to exclude the gain. If you do not file a joint return with that spouse, that spouse must consent to the election by writing in the bottom margin of Form N-103 or on an attached statement, "I consent to Part III election," and signing it.

The election does not apply separately to you and your spouse. If you and your spouse make an election during marriage and later divorce, no further elections are available to either of you or to your new spouse if you remarry.

Postponing Gain (Part IV)

Generally, you must postpone gain if you buy or build, and occupy another home within 2 years before or after the sale. The amount of gain that is postponed is shown on line 28.

If a spouse dies after the old home is sold and before the new home is purchased, the gain from the sale of the old home may be postponed if the above requirements are met, the spouses were married on the date of death, and the surviving spouse used the new home as his or her main home. This applies regardless of whether the title of the old home is in one spouse's name or held jointly. See federal Publication 523 for more information.

If you bought more than one home during the replacement period, only the last one you bought qualifies as your new home for postponing gain. During the replacement period, any sale after the first does not qualify for postponing gain, unless you sold the home because of a job relocation and are allowed a moving expense deduction.

If you later sell your new home and do not replace it, the postponed gain will be taxed at that time. If you replace it, you may continue to postpone the gain.

Replacement Period for Postponing Gain.—If you buy or build, and move into another main home within the replacement period, you must usually postpone paying tax on all or part of the gain. The replacement period starts 2 years before and ends 2 years after you sell your former main home. The replacement period may be longer if you are on active duty in the U.S. Armed Forces for more than 90 days, or if you live and work outside the U.S. See federal Publication 523 for more information.

Applying Separate Gain to Basis of New Home.— If you own the old home separately, but you and your spouse own the new house jointly (or vice versa), you and your spouse may elect to divide the gain and the adjusted basis if both of you:

1. Use the old and new home(s) as your main home(s), and
2. Sign a statement that says, "We agree to reduce the basis of the new home(s) by the gain from selling the old home(s)." This statement can be made in the bottom margin of Form N-103 or on an attached sheet.

If you both do not meet these two requirements, you must report the gain in the regular way without allocation.

Sales After May 6, 1997

If you sold your main home after May 6, 1997, you may be able to:

- Exclude all or part of the gain from the sale (see **Exclusion for Sales After May 6, 1997**), or
- Elect to take the one-time exclusion for people age 55 or older or to postpone paying tax on all or part of the gain (see **Election To Use Rules That Apply To Sales Before May 7, 1997**), or
- Elect to pay tax on all the gain. To do so, complete all the lines in Parts I and II other than lines 2a and 2b. Enter the gain on the Capital Gain/Loss Worksheet in the Instructions for Form N-12 or Form N-15.

Exclusion for Sales After May 6, 1997 (Part V)

You can exclude up to $250,000 ($500,000 for certain married persons filing a joint return) of gain from the sale of your main home if **both 1** and **2** below apply.

1. Neither you nor your spouse if filing a joint return are excluding gain from the sale of another home after May 6, 1997.
2. You or your spouse if filing a joint return owned and lived in the home for periods adding up to at least 2 years within the 5-year period ending on the date of sale. But see **Exceptions To the Use Test** and **Exceptions To the Ownership and Use Tests.**

If **both 1** and **2** do not apply, you may still be able to exclude all or part of the gain.

To take the exclusion, complete Part V. If the gain is less than the maximum exclusion entered on line 31, the difference cannot be excluded on a future sale of another main home. For more details on this exclusion, see federal Publication 523.

Exceptions To the Use Test

The following exceptions apply in determining the time you lived in the home sold.

Temporary absences. You can count short temporary absences such as for vacations or other seasonal absences as time lived in the home even if you rented out the home during the absences.

Individuals with a disability. If you meet this exception, you are treated as having lived in the home sold during any time that you lived in a facility such as a nursing home. The facility must be licensed by a state or political subdivision to care for persons with your condition. You meet this exception if, during the 5-year period ending on the date of sale:

- You became physically or mentally unable to care for yourself, and
- You owned and lived in your home as your main home for a total of at least 1 year.

Divorced or separated taxpayers. You may be able to count time your spouse or former spouse was allowed to live in the home. See federal Publication 523 for details.

Exceptions To the Ownership and Use Tests

The following exceptions apply in determining the time you owned and lived in the home sold.

Surviving spouse. If your spouse died before the old home was sold and you have not remarried, you are treated as having owned and lived in the home sold during any time that your deceased spouse owned and lived in the home.

Home transferred from spouse or former spouse. You may be able to count time your spouse or former spouse owned and lived in the home. See federal Publication 523 for details.

Home sold before 1997. You may be able to count time you owned and lived in a previous home on which you postponed all or part of the gain, or that was destroyed or condemned. See federal Publication 523 for details.

Election To Use Rules That Apply To Sales Before May 7, 1997

If you sold your home after May 6, 1997, you can elect to use the rules that apply to sales before May 7, 1997. You can make the election if **any** of the following apply:

- You sold your home **before** August 6, 1997.
- You sold your home **after** August 5, 1997, under a contract that was binding on that date.
- You sold your home **after** August 5, 1997, **and** you bought a new home on or before that date, or under a binding contract that was in effect on that date, and that purchase would qualify you to postpone gain on the sale. See **Postponing Gain** for details.

To make the election for this sale, complete Part III and/or Part IV.

Line-by-Line Instructions

Refer to federal line-by-line instructions for Form 2119. Additional instructions are noted below.

Line 3—Use Hawaii Schedule D-1, not federal Form 4797, to report the part of the sale that applies to the rental or business use.

Line 6—Section 235-5.5(f), HRS, requires that the amount received as a distribution from an IHA which was used to purchase a residential property in Hawaii be included in the gross income of the individual.

Individuals who purchased residential property **before January 1, 1990**, with a distribution from an IHA must include in gross income in the year the property is sold, conveyed, or transferred an amount equal to the amount of the distribution, unless an election was made to include one-tenth of the distribution in gross income each year for ten years starting in 1990.

Individuals who purchase residential property **after December 31, 1989**, or those who purchased property before January 1, 1990, and have made the election to do so, shall include in gross income one-tenth of the distribution each year for 10 years. If such individual sells the property purchased with an IHA distribution before the end of the 10 year period, the remaining amount of the distribution not previously reported shall be included in gross income in the year of sale.

Individuals who purchase residential property **after December 31, 1996**, with a distribution from an IHA established prior to January 1, 1990, and who have made the election to do so, shall include in gross income in the year the property is sold, conveyed, or transferred an amount equal to the amount of the distribution.

Enter on line 6 the total amount of the IHA distribution.

Line 7—Enter on this line the amount of the IHA distribution not previously reported. Also include this amount on Form N-11, line 10, Form N-12, line 18, or Form N-15, line 19. Identify this amount as "IHA distribution reported on sale of property."

Line 8—Section 235-5.5(f), HRS, also requires that 10% (.10) of the IHA distribution used to purchase residential property be added to the individual's gross income or tax liability upon the sale, conveyance, or transfer of the property if the total IHA distribution was not previously reported. On line 8, enter 10% (.10) of line 6.

The following individuals shall add 10% of the IHA distribution to their **gross income**:

1. Individuals who purchased residential property before January 1, 1990, and who have not made the election to report the distribution as gross income over a ten-year period, and
2. Individuals who purchased residential property after December 31, 1996, with a distribution from an IHA established prior to January 1, 1990, and who made the election to report the distribution as gross income at the time the property is sold.

Include this amount on Form N-11, line 10, Form N-12, line 18, or Form N-15, line 19. Identify this amount as "10% penalty on IHA distribution."

The following individuals shall add 10% of the IHA distribution to their **tax liability**:

1. Individuals who purchased residential property after December 31, 1989, but before January 1, 1997,
2. Individuals who purchased residential property before January 1, 1990, and who have made the election to report the distribution as gross income over a ten-year period, and
3. Individuals who purchased residential property after December 31, 1996, with a distribution from an IHA established prior to January 1, 1990, and who have not made the election to report the distribution as gross income at the time the property is sold.

Include this amount on Form N-11, line 26, Form N-12, line 38, or Form N-15, line 39 and check the box indicating that you are including the separate tax from Form N-103.

Line 12—Adjusted Basis of Home Sold.—If you were a nonresident of Hawaii when you purchased your old Hawaii home, do not reduce the basis of the old home by any gain on the sale of a prior home which was located outside of Hawaii.

Line 21—Gain after exclusion.—Subtract the amount on line 20, if any, from the amount on line 13 and enter the result on line 21. If the result is zero, stop here and attach this form to your return. If you answered "Yes" on line 2a, go to line 22 now.

Line 27—Taxable gain.—Enter on line 27 the smaller of line 21 or line 26. If this amount is zero, go to line 28 and attach this form to your return. If you are reporting the sale on the installment method, see the federal instructions and go to line 28. All others, enter this amount on the Capital Gain/Loss Worksheet in the Instructions for Form N-12 or Form N-15, and go to line 28.

Line 34—Taxable gain.—If you are reporting the sale on the installment method, see the federal instructions. All others, enter this amount on the Capital Gain/Loss Worksheet in the Instructions for Form N-12 or Form N-15.